

SB 1153 A STAFF MEASURE SUMMARY

Senate Committee On Rules

Action Date: 06/09/25

Action: Do pass with amendments. Requesting referral to Ways and Means. (Printed A-Eng.)

Vote: 3-2-0-0

Yeas: 3 - Golden, Jama, Manning Jr

Nays: 2 - Bonham, Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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Meeting Dates: 6/3, 6/3, 6/5, 6/9

WHAT THE MEASURE DOES:

The measure establishes a new standard that applies to certain water right transfer applications. It prohibits proposed transfers that the Water Resources Department (OWRD) determines would contribute to a flow reduction that results in the loss of in-stream habitat for native migratory fish in the Salmonidae family. The measure exempts certain applications from this standard, establishes a uniform process for OWRD to handle contested cases, and authorizes the Oregon Water Resources Commission to adopt rules that establish categories of transfer applications that are eligible for general authorization. If requested by a federally recognized Tribe, it directs OWRD to engage in consultation on water right transfer applications. The measure authorizes OWRD to impose conditions on some water right changes.

Detailed Summary:

Sections 1 – 6: Water Right Transfer Applications

Prohibits OWRD from approving the following types of water right transfers if it determines the change would result in a loss of in-stream habitat for native migratory Salmonidae fish in stream reaches not protected by an existing in-stream water right:

- A new point of diversion (POD) upstream of the existing POD when no in-stream water right exists
- A new point of appropriation (POA) from outside a quarter mile to within a quarter mile of a stream when no in-stream water right exists
- Moving a POA already within a quarter mile of a stream closer to a stream where no in-stream water right exists.

Requires OWRD to determine whether a proposed water transfer would harm in-stream habitat for native migratory Salmonidae fish, using the same timeline as the injury analysis. If OWRD does not make a determination within that timeframe, the standard may not be considered in the review. Requires OWRD to issue a formal order with written findings for any determination.

Exempts from New Standard:

- Transfers supporting aquatic habitat restoration or protection, if application materials (and ODFW consultation) show a net benefit to native migratory Salmonidae fish
- Municipal water rights or rights held by a municipality
- Transfers needed to address an imminent public health or safety risk

Requires that WRC's order must be published, and that their determination must contain written findings that a proposed transfer would contribute to a reduction in flow that would result in a loss of in-stream habitat for native migratory Salmonidae fish.

Section 8: Tribal Consultation on Transfer Applications:

Defines “consultation” as formal communication between OWRD and a tribe to obtain the free, prior, and informed consent of a tribe for water right transfers. Requires OWRD to consult with federally recognized tribes if requested, on water right transfer applications that may affect tribal sovereign rights, including treaty-protected water rights. Requires OWRD to seek to ensure that the consultation process gives due regard to the sovereign nature of concerns raised by the tribe, while not unreasonably delaying the processing of any water right transfer application. Limits the consultation period to 90 days unless the applicant agrees to a longer timeline. Authorizes a tribe to protest OWRD’s preliminary determination or order on any such application. Requires OWRD, if a tribe was consulted, to serve the preliminary order or determination to the tribe at the same time it is served to the applicant. Finds that a tribe’s right to protest does not alter or limit any other protest rights the tribe may have.

Section 10: OWRD Authority to Condition Transfers

Authorizes OWRD to impose any of the following conditions on the specific portion of a water right that is included in a transfer application:

1. Water use or level measurement and reporting.
2. Installation of fish screening or bypass devices.
3. Measures to:
 - avoid or minimize injury to the sovereign rights, privileges, and interests of a tribe, including but not limited to treaty-protected rights, in the waters of this state
 - to avoid or minimize the loss of in-stream habitat for native migratory Salmonidae fish
 - prevent injury or enlargement of a water right, or to ensure that a water right transfer is from the same source.
4. If a transfer is from a well, measures to ensure that well construction standards are met.

At the applicant’s request, OWRD may include mitigation measures as a condition of approval to the extent they are proportional to the anticipated impairment of in-stream habitat for native migratory fish in the Salmonidae family. Prohibits OWRD from imposing conditions for avoiding or minimizing harm that results in loss of in-stream habitat for native migratory fish in the Salmonidae family in a stream reach not protected by existing in-stream water rights, when the water rights in question are for municipal use.

Section 11-12: Uniform Process for a Contested Case

Establishes a uniform process for handling contested cases related to water rights by requiring OWRD, in consultation with the Office of Administrative Hearings, to establish default hearing schedules that ensure that contested case proceedings are completed within 180 days from referral to hearing completion, unless an extension is granted. Authorizes extensions if OWRD requests a different schedule after consulting with the parties, if the chief administrative law judge finds the default timeline unworkable, or if the assigned judge determines that an extension is needed to serve the public interest, ensure due process, or uphold justice.

Section 13: Rulemaking Authority for General Authorization Approvals of Transfer Applications

Authorizes WRC to adopt rules that create categories of water right transfer or change applications eligible for limited review or programmatic approval, which can be based on applications with similar characteristics and predictable outcomes. Authorizes WRC to set standard terms and conditions for each category to ensure that approval standards are met under the process.

Section 14: Basin Rules

Authorizes WRD to adopt basin program rules to apply to specified transfers. . Prohibits WRC from adopting rules to override the municipal exemption.

Section 15: Funding Reimbursement

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Authorizes OWRD and the Department of Fish and Wildlife to enter into agreements for OWRD to compensate the Oregon Fish and Wildlife Department for services provided under these provisions.

Section 16-20: In-Stream Transfers and Leases, Savings Clause, and Reporting Requirements

- Exempts applications for in-stream leases and conserved water allocation from evaluation under measure provisions establishing transfer application standards related to flow reduction and instream habitat loss for native migratory fish.
- Adds savings clause that states that specific sections of this measure do not affect any water right settlement agreement involving the State of Oregon, one or more federally recognized Indian tribe, or the federal government.
- Requires OWRD to report to the Joint Committee on Ways and Means on water right transfer applications received since January 1, 2026, December 15, 2026, and again by December 15, 2028. Requires the report to include the total number of applications, how many were evaluated, the number of those transfers approved or denied, and the number of transfers for which protests were filed after approval or denial.

ISSUES DISCUSSED:

- Water right application process improvements for the Water Resources Department (OWRD) and stakeholder involvement in amendment drafting
- How different types of water transfers may impact stream reaches for sensitive, threatened, or endangered (STE) fish species
- Grounds for exempting municipalities from new standards
- Tribal involvement and consultation
- Neighboring states' water right application processes

EFFECT OF AMENDMENT:

The amendment replaces the measure. It establishes new standards for the Water Resources Department (OWRD) to approve certain water right transfer applications related to a reduction in streamflow that results in the loss of in-stream habitat for native migratory fish in the Salmonidae family. It exempts applications for aquatic habitat restoration projects, municipal uses, or transfers that are necessary to address an imminent public health or safety risk, and clarifies that the Water Resources Commission (WRC) cannot adopt rules to override the municipal exemption. It establishes a uniform process for OWRD to handle contested cases and modifies their rulemaking authority for general authorization approvals for transfers. The amendment also revises conditions for Tribal consultations on transfer applications and authorizes the imposition of conditions on certain water right transfers

Detailed Summary:

Sections 1 – 6: Water Right Transfer Applications

Removes water quality standard and replaces standard affecting sensitive, threatened or endangered aquatic species with a reduction in streamflow that results in the loss of in-stream habitat for native migratory fish in the Salmonidae family. Specifies types of transfer applications the new standard applies to and lists exempted uses. Sets certain requirements for OWRD to make an application determination.

Section 8: Tribal Consultation on Transfer Applications:

Revises Tribal review of transfer applications to direct OWRD to engage in consultation on water right transfer applications, if requested, and adds certain conditions for Tribal consultations and protest rights.

Sections 10-20: Adds the following provisions

- Authorizes OWRD to condition transfers
- Establishes a uniform process for a contested case
- Grants WRC rulemaking authority for general authorization approvals of transfer applications

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- OWRD and Department of Fish and Wildlife funding reimbursement
- Exempts In-stream transfers and leases
- Savings clause
- Creates OWRD reporting requirements

BACKGROUND:

Water rights are attached to the specific property where the water use is authorized, and they transfer with property sales unless excluded in the deed or the buyer is notified of a separate transfer. To change the place of use, type of use, or point of diversion of a water right, a transfer application must be approved by the Water Resources Department (OWRD). The applicant must be the landowner, have their consent, or prove sufficient interest in the water right. A water right transfer may not enlarge a water right or injure other water rights.